

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDERICK LEE BAKER,

Petitioner,

v.

BEN CURRY, Warden,

Respondent.

No. C 07-06289 CW (PR)

ORDER (1) DIRECTING RESPONDENT
TO FILE RESPONSE TO
PETITIONER'S MOTION FOR LEAVE
TO AMEND PETITION;
(2) ADDRESSING ISSUE INVOLVING
TRANSFER OF PETITIONER'S PRIOR
HABEAS ACTION IN THE CENTRAL
DISTRICT TO THIS COURT

On December 12, 2007, Petitioner, a state prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court issued an order requiring Respondent to show cause why the petition for a writ of habeas corpus should not be granted. On July 14, 2008, Respondent filed a motion to dismiss the petition. Petitioner filed an opposition, and Respondent filed a reply.

Before the Court is Petitioner's "Motion for Permission for Leave to Amend the Petition for Writ of Habeas Corpus Pursuant to Federal Rule of Civil Procedure 15(a)" (docket no. 26) in which Petitioner seeks to amend his petition "to include exhaustion of state appellate court remedies" (Mot. to Am. Pet. at 1.) Attached to Petitioner's motion is the October 10, 2008 decision by the California Court of Appeal denying his state habeas petition. (Mot. to Am. Pet., Ex. Z(2).) Also attached is Petitioner's state habeas petition filed in the appellate court on September 30, 2008. (Id.)

The certificate of service shows the motion for leave to amend the petition was served on the Office of the Attorney General.

1 Respondent shall file a response to the motion for leave to amend
2 the petition within fourteen (14) days of the date of this Order.
3 Petitioner may file a reply within thirty (30) days of the date of
4 his receipt of the response.

5 The Court further notes that in 2006 Petitioner filed a habeas
6 action in the United States District Court for the Central District
7 of California. See Baker v. Kane, No. 06-cv-01323-JSL-MAN (C.D.
8 Cal. Nov. 25, 2006) (habeas petition filed). In an Order dated
9 December 4, 2006, Magistrate Judge Margaret A. Nagle transferred
10 Petitioner's prior habeas action to this Court. (Dec. 4, 2006
11 Transfer Order in Central District Case No. 06-cv-01323-JSL-MAN.)
12 However, to date, that action has not been transferred to this
13 Court. Therefore, this matter must be corrected. Pursuant to
14 Magistrate Judge Nagle's December 4, 2006 Order, the Clerk of the
15 Central District Court of California is ordered to TRANSFER
16 Petitioner's prior action filed under Central District Case No.
17 06-cv-01323-JSL-MAN forthwith to this Court.

18 The Clerk of the Court is directed to send a copy of this
19 Order to the Clerk of the Central District Court of California.

20 IT IS SO ORDERED.

21 Dated: 2/2/09

22 
23 CLAUDIA WILKEN
24 UNITED STATES DISTRICT JUDGE
25
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27
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK L. BAKER,

Plaintiff,

v.

BEN CURRY et al,

Defendant.

Case Number: CV07-06289 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 2, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Denise Alayne Yates
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Clerk, U.S. District Court
Central District of California
826 Edward R. Roybal Federal Building
and Courthouse
255 East Temple Street
Los Angeles, CA 90012-3332

Dated: February 2, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk